

BEFORE THE  
BOARD OF REGISTERED NURSING  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Statement of Issues Against:

**NEAL STEPHEN CHITTENDEN**

Registered Nurse License Applicant

Respondent

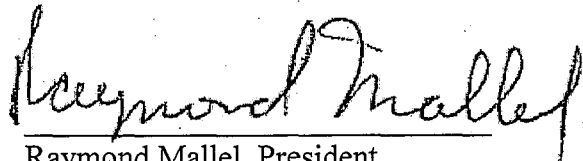
Case No. 2012-336

**DECISION AND ORDER**

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on **September 10, 2012.**

IT IS SO ORDERED **August 9, 2012.**



Raymond Mallel, President  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California

1 KAMALA D. HARRIS  
Attorney General of California  
2 LINDA K. SCHNEIDER  
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8  
9 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

11 In the Matter of the Statement of Issues  
12 Against:

Case No. 2012-336

13 **NEAL STEPHEN CHITTENDEN**  
14 **1137 Stillwater Road**  
**Corona, CA 92882**

**STIPULATED SETTLEMENT AND**  
**DISCIPLINARY ORDER**

15 Respondent.

16  
17 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-  
18 entitled proceedings that the following matters are true:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) is the Interim Executive Officer of the  
21 Board of Registered Nursing. She brought this action solely in her official capacity and is  
22 represented in this matter by Kamala D. Harris, Attorney General of the State of California, by  
23 Amanda Dodds, Senior Legal Analyst.

24 2. Respondent Neal Stephen Chittenden (Respondent) is representing himself in this  
25 proceeding and has chosen not to exercise his right to be represented by counsel.

26 3. On or about March 1, 2011, Respondent filed an application dated February 10, 2011,  
27 with the Board of Registered Nursing to obtain a Registered Nurse License. The Board of  
28 Registered Nursing denied the application on September 22, 2011.

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## CONTINGENCY

11. This stipulation shall be subject to approval by the Board of Registered Nursing. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Registered Nursing may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

12. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

13. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

14. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

### **DISCIPLINARY ORDER**

IT IS HEREBY ORDERED that the application of Respondent Neal Stephen Chittenden for licensure is hereby granted. Upon successful completion of the licensure examination and all other licensing requirements, a license shall be issued to Respondent. Said license shall immediately be revoked, the order of revocation stayed and Respondent placed on probation for a

1 period of three (3) years on the following conditions:

2 **Severability Clause.** Each condition of probation contained herein is a separate and  
3 distinct condition. If any condition of this Order, or any application thereof, is declared  
4 unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other  
5 applications thereof, shall not be affected. Each condition of this Order shall separately be valid  
6 and enforceable to the fullest extent permitted by law.

7 1. **Obey All Laws.** Respondent shall obey all federal, state and local laws. A full and  
8 detailed account of any and all violations of law shall be reported by Respondent to the Board in  
9 writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with  
10 this condition, Respondent shall submit completed fingerprint forms and fingerprint fees within  
11 45 days of the effective date of the decision, unless previously submitted as part of the licensure  
12 application process.

13 **Criminal Court Orders:** If Respondent is under criminal court orders, including  
14 probation or parole, and the order is violated, this shall be deemed a violation of these probation  
15 conditions, and may result in the filing of an accusation and/or petition to revoke probation.

16 2. **Comply with the Board's Probation Program.** Respondent shall fully comply with  
17 the conditions of the Probation Program established by the Board and cooperate with  
18 representatives of the Board in its monitoring and investigation of the Respondent's compliance  
19 with the Board's Probation Program. Respondent shall inform the Board in writing within no  
20 more than 15 days of any address change and shall at all times maintain an active, current license  
21 status with the Board, including during any period of suspension.

22 Upon successful completion of probation, Respondent's license shall be fully restored.

23 3. **Report in Person.** Respondent, during the period of probation, shall appear in  
24 person at interviews/meetings as directed by the Board or its designated representatives.

25 4. **Residency, Practice, or Licensure Outside of State.** Periods of residency or  
26 practice as a registered nurse outside of California shall not apply toward a reduction of this  
27 probation time period. Respondent's probation is tolled, if and when he resides outside of  
28 California. Respondent must provide written notice to the Board within 15 days of any change of

1 residency or practice outside the state, and within 30 days prior to re-establishing residency or  
2 returning to practice in this state.

3 Respondent shall provide a list of all states and territories where he has ever been licensed  
4 as a registered nurse, vocational nurse, or practical nurse. Respondent shall further provide  
5 information regarding the status of each license and any changes in such license status during the  
6 term of probation. Respondent shall inform the Board if he applies for or obtains a new nursing  
7 license during the term of probation.

8 5. **Submit Written Reports.** Respondent, during the period of probation, shall submit  
9 or cause to be submitted such written reports/declarations and verification of actions under  
10 penalty of perjury, as required by the Board. These reports/declarations shall contain statements  
11 relative to Respondent's compliance with all the conditions of the Board's Probation Program.  
12 Respondent shall immediately execute all release of information forms as may be required by the  
13 Board or its representatives.

14 Respondent shall provide a copy of this Decision to the nursing regulatory agency in every  
15 state and territory in which he has a registered nurse license.

16 6. **Function as a Registered Nurse.** Respondent, during the period of probation, shall  
17 engage in the practice of registered nursing in California for a minimum of 24 hours per week for  
18 6 consecutive months or as determined by the Board.

19 For purposes of compliance with the section, "engage in the practice of registered nursing"  
20 may include, when approved by the Board, volunteer work as a registered nurse, or work in any  
21 non-direct patient care position that requires licensure as a registered nurse.

22 The Board may require that advanced practice nurses engage in advanced practice nursing  
23 for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

24 If Respondent has not complied with this condition during the probationary term, and  
25 Respondent has presented sufficient documentation of his good faith efforts to comply with this  
26 condition, and if no other conditions have been violated, the Board, in its discretion, may grant an  
27 extension of Respondent's probation period up to one year without further hearing in order to

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1 comply with this condition. During the one year extension, all original conditions of probation  
2 shall apply.

3 **7. Employment Approval and Reporting Requirements.** Respondent shall obtain  
4 prior approval from the Board before commencing or continuing any employment, paid or  
5 voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all  
6 performance evaluations and other employment related reports as a registered nurse upon request  
7 of the Board.

8 Respondent shall provide a copy of this Decision to his employer and immediate  
9 supervisors prior to commencement of any nursing or other health care related employment.

10 In addition to the above, Respondent shall notify the Board in writing within seventy-two  
11 (72) hours after he obtains any nursing or other health care related employment. Respondent  
12 shall notify the Board in writing within seventy-two (72) hours after he is terminated or separated,  
13 regardless of cause, from any nursing, or other health care related employment with a full  
14 explanation of the circumstances surrounding the termination or separation.

15 **8. Supervision.** Respondent shall obtain prior approval from the Board regarding  
16 Respondent's level of supervision and/or collaboration before commencing or continuing any  
17 employment as a registered nurse, or education and training that includes patient care.

18 Respondent shall practice only under the direct supervision of a registered nurse in good  
19 standing (no current discipline) with the Board of Registered Nursing, unless alternative methods  
20 of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are  
21 approved.

22 Respondent's level of supervision and/or collaboration may include, but is not limited to the  
23 following:

24 (a) Maximum - The individual providing supervision and/or collaboration is present in  
25 the patient care area or in any other work setting at all times.

26 (b) Moderate - The individual providing supervision and/or collaboration is in the patient  
27 care unit or in any other work setting at least half the hours Respondent works.

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1 (c) Minimum - The individual providing supervision and/or collaboration has person-to-  
2 person communication with Respondent at least twice during each shift worked.

3 (d) Home Health Care - If Respondent is approved to work in the home health care  
4 setting, the individual providing supervision and/or collaboration shall have person-to-person  
5 communication with Respondent as required by the Board each work day. Respondent shall  
6 maintain telephone or other telecommunication contact with the individual providing supervision  
7 and/or collaboration as required by the Board during each work day. The individual providing  
8 supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to  
9 patients' homes visited by Respondent with or without Respondent present.

10 9. **Employment Limitations.** Respondent shall not work for a nurse's registry, in any  
11 private duty position as a registered nurse, a temporary nurse placement agency, a traveling nurse,  
12 or for an in-house nursing pool.

13 Respondent shall not work for a licensed home health agency as a visiting nurse unless the  
14 registered nursing supervision and other protections for home visits have been approved by the  
15 Board. Respondent shall not work in any other registered nursing occupation where home visits  
16 are required.

17 Respondent shall not work in any health care setting as a supervisor of registered nurses.  
18 The Board may additionally restrict Respondent from supervising licensed vocational nurses  
19 and/or unlicensed assistive personnel on a case-by-case basis.

20 Respondent shall not work as a faculty member in an approved school of nursing or as an  
21 instructor in a Board approved continuing education program.

22 Respondent shall work only on a regularly assigned, identified and predetermined  
23 worksite(s) and shall not work in a float capacity.

24 If Respondent is working or intends to work in excess of 40 hours per week, the Board may  
25 request documentation to determine whether there should be restrictions on the hours of work.

26 10. **Complete a Nursing Course(s).** Respondent, at his own expense, shall enroll and  
27 successfully complete a course(s) relevant to the practice of registered nursing no later than six  
28 months prior to the end of his probationary term.



Respondent shall obtain prior approval from the Board before enrolling in the course(s). Respondent shall submit to the Board the original transcripts or certificates of completion for the above required course(s). The Board shall return the original documents to Respondent after photocopying them for its records.

11. **Violation of Probation.** If Respondent violates the conditions of his probation, the Board after giving Respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (revocation/suspension) of Respondent's license.

If during the period of probation, an accusation or petition to revoke probation has been filed against Respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against Respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board.

12. **License Surrender.** During Respondent's term of probation, if he ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation, Respondent may surrender his license to the Board. The Board reserves the right to evaluate Respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances, without further hearing. Upon formal acceptance of the tendered license and wall certificate, Respondent will no longer be subject to the conditions of probation.

Surrender of Respondent's license shall be considered a disciplinary action and shall become a part of Respondent's license history with the Board. A registered nurse whose license has been surrendered may petition the Board for reinstatement no sooner than the following minimum periods from the effective date of the disciplinary decision:

(1) Two years for reinstatement of a license that was surrendered for any reason other than a mental or physical illness; or

(2) One year for a license surrendered for a mental or physical illness.

13. **Physical Examination.** Within 45 days of the effective date of this Decision, Respondent, at his expense, shall have a licensed physician, nurse practitioner, or physician

1 assistant, who is approved by the Board before the assessment is performed, submit an  
2 assessment of the Respondent's physical condition and capability to perform the duties of a  
3 registered nurse, including a determination as set forth below in the condition titled "Rule-Out  
4 Substance Abuse Assessment." Such an assessment shall be submitted in a format acceptable to  
5 the Board. If medically determined, a recommended treatment program will be instituted and  
6 followed by the Respondent with the physician, nurse practitioner, or physician assistant  
7 providing written reports to the Board on forms provided by the Board.

8 If Respondent is determined to be unable to practice safely as a registered nurse, the  
9 licensed physician, nurse practitioner, or physician assistant making this determination shall  
10 immediately notify the Board and Respondent by telephone, and the Board shall request that the  
11 Attorney General's office prepare an accusation or petition to revoke probation. Respondent shall  
12 immediately cease practice and shall not resume practice until notified by the Board. During this  
13 period of suspension, Respondent shall not engage in any practice for which a license issued by  
14 the Board is required until the Board has notified Respondent that a medical determination  
15 permits Respondent to resume practice. This period of suspension will not apply to the reduction  
16 of this probationary time period.

17 If Respondent fails to have the above assessment submitted to the Board within the 45-day  
18 requirement, Respondent shall immediately cease practice and shall not resume practice until  
19 notified by the Board. This period of suspension will not apply to the reduction of this  
20 probationary time period. The Board may waive or postpone this suspension only if significant,  
21 documented evidence of mitigation is provided. Such evidence must establish good faith efforts  
22 by Respondent to obtain the assessment, and a specific date for compliance must be provided.  
23 Only one such waiver or extension may be permitted.

24 **14. Mental Health Examination.** Respondent shall, within 45 days of the effective date  
25 of this Decision, have a mental health examination including psychological testing as appropriate  
26 to determine his capability to perform the duties of a registered nurse, including a determination  
27 as set forth below in the condition titled "Rule-Out Substance Abuse Assessment." The  
28 examination will be performed by a psychiatrist, psychologist or other licensed mental health

1 practitioner approved by the Board. The examining mental health practitioner will submit a  
2 written report of that assessment and recommendations to the Board. All costs are the  
3 responsibility of Respondent. Recommendations for treatment, therapy or counseling made as a  
4 result of the mental health examination will be instituted and followed by Respondent.

5 If Respondent is determined to be unable to practice safely as a registered nurse, the  
6 licensed mental health care practitioner making this determination shall immediately notify the  
7 Board and Respondent by telephone, and the Board shall request that the Attorney General's  
8 office prepare an accusation or petition to revoke probation. Respondent shall immediately cease  
9 practice and may not resume practice until notified by the Board. During this period of  
10 suspension, Respondent shall not engage in any practice for which a license issued by the Board  
11 is required, until the Board has notified Respondent that a mental health determination permits  
12 Respondent to resume practice. This period of suspension will not apply to the reduction of this  
13 probationary time period.

14 If Respondent fails to have the above assessment submitted to the Board within the 45-day  
15 requirement, Respondent shall immediately cease practice and shall not resume practice until  
16 notified by the Board. This period of suspension will not apply to the reduction of this  
17 probationary time period. The Board may waive or postpone this suspension only if significant,  
18 documented evidence of mitigation is provided. Such evidence must establish good faith efforts  
19 by Respondent to obtain the assessment, and a specific date for compliance must be provided.  
20 Only one such waiver or extension may be permitted.

21 **15. Rule-Out Substance Abuse Assessment.** If the examiner conducting the physical  
22 and/or mental health examination determines that the respondent is dependent upon drugs or  
23 alcohol, or has had problems with drugs or alcohol (i.e. drug dependence in remission or alcohol  
24 dependence in remission), that might reasonably affect the safe practice of nursing, then the  
25 respondent must further comply with the following additional terms and conditions of probation:

26 **A. Participate in Treatment/Rehabilitation Program for Chemical**  
27 **Dependence.** Respondent, at his expense, shall successfully complete during the  
28 probationary period or shall have successfully completed prior to commencement

1 of probation a Board-approved treatment/rehabilitation program of at least six  
2 months duration. As required, reports shall be submitted by the program on forms  
3 provided by the Board. If Respondent has not completed a Board-approved  
4 treatment/rehabilitation program prior to commencement of probation,  
5 Respondent, within 45 days from the effective date of the decision, shall be  
6 enrolled in a program. If a program is not successfully completed within the first  
7 nine months of probation, the Board shall consider Respondent in violation of  
8 probation.

9 Based on Board recommendation, each week Respondent shall be required  
10 to attend at least one, but no more than five 12-step recovery meetings or  
11 equivalent (e.g., Narcotics Anonymous, Alcoholics Anonymous, etc.) and a nurse  
12 support group as approved and directed by the Board. If a nurse support group is  
13 not available, an additional 12-step meeting or equivalent shall be added.  
14 Respondent shall submit dated and signed documentation confirming such  
15 attendance to the Board during the entire period of probation. Respondent shall  
16 continue with the recovery plan recommended by the treatment/rehabilitation  
17 program or a licensed mental health examiner and/or other ongoing recovery  
18 groups.

19 **B. Abstain from Use of Psychotropic (Mood-Altering) Drugs.** Respondent  
20 shall completely abstain from the possession, injection or consumption by any  
21 route of all controlled substances and all psychotropic (mood altering) drugs,  
22 including alcohol, except when the same are ordered by a health care professional  
23 legally authorized to do so as part of documented medical treatment. Respondent  
24 shall have sent to the Board, in writing and within fourteen (14) days, by the  
25 prescribing health professional, a report identifying the medication, dosage, the  
26 date the medication was prescribed, the Respondent's prognosis, the date the  
27 medication will no longer be required, and the effect on the recovery plan, if  
28 appropriate.

1           Respondent shall identify for the Board a single physician, nurse  
2 practitioner or physician assistant who shall be aware of Respondent's history of  
3 substance abuse and will coordinate and monitor any prescriptions for Respondent  
4 for dangerous drugs, controlled substances or mood-altering drugs. The  
5 coordinating physician, nurse practitioner, or physician assistant shall report to the  
6 Board on a quarterly basis Respondent's compliance with this condition. If any  
7 substances considered addictive have been prescribed, the report shall identify a  
8 program for the time limited use of any such substances.

9           The Board may require the single coordinating physician, nurse  
10 practitioner, or physician assistant to be a specialist in addictive medicine, or to  
11 consult with a specialist in addictive medicine.

12       **C.     Submit to Tests and Samples.** Respondent, at his expense, shall  
13 participate in a random, biological fluid testing or a drug screening program which  
14 the Board approves. The length of time and frequency will be subject to approval  
15 by the Board. Respondent is responsible for keeping the Board informed of  
16 Respondent's current telephone number at all times. Respondent shall also ensure  
17 that messages may be left at the telephone number when she is not available and  
18 ensure that reports are submitted directly by the testing agency to the Board, as  
19 directed. Any confirmed positive finding shall be reported immediately to the  
20 Board by the program and Respondent shall be considered in violation of  
21 probation.

22           In addition, Respondent, at any time during the period of probation, shall  
23 fully cooperate with the Board or any of its representatives, and shall, when  
24 requested, submit to such tests and samples as the Board or its representatives may  
25 require for the detection of alcohol, narcotics, hypnotics, dangerous drugs, or other  
26 controlled substances.

27           If Respondent has a positive drug screen for any substance not legally  
28 authorized and not reported to the coordinating physician, nurse practitioner, or

1 physician assistant, and the Board files a petition to revoke probation or an  
2 accusation, the Board may suspend Respondent from practice pending the final  
3 decision on the petition to revoke probation or the accusation. This period of  
4 suspension will not apply to the reduction of this probationary time period.

5 If Respondent fails to participate in a random, biological fluid testing or  
6 drug screening program within the specified time frame, Respondent shall  
7 immediately cease practice and shall not resume practice until notified by the  
8 Board. After taking into account documented evidence of mitigation, if the Board  
9 files a petition to revoke probation or an accusation, the Board may suspend  
10 Respondent from practice pending the final decision on the petition to revoke  
11 probation or the accusation. This period of suspension will not apply to the  
12 reduction of this probationary time period.

13 **D. Therapy or Counseling Program.** Respondent, at his expense, shall  
14 participate in an on-going counseling program until such time as the Board  
15 releases him from this requirement and only upon the recommendation of the  
16 counselor. Written progress reports from the counselor will be required at various  
17 intervals.

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1 ACCEPTANCE

2 I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the  
3 stipulation and the effect it will have on my Registered Nurse License. I enter into this Stipulated  
4 Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be  
5 bound by the Decision and Order of the Board of Registered Nursing.

6  
7 DATED: 3/18/12

Neal Chittenden

8 NEAL STEPHEN CHITTENDEN  
9 Respondent

10 ENDORSEMENT

11 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully  
12 submitted for consideration by the Board of Registered Nursing of the Department of Consumer  
13 Affairs.

14 Dated: 3/23/12

15 Respectfully submitted,

16 KAMALA D. HARRIS  
17 Attorney General of California  
18 LINDA K. SCHNEIDER  
19 Supervising Deputy Attorney General

Amanda Dodds

20 AMANDA DODDS  
21 Senior Legal Analyst  
22 Attorneys for Complainant

23 SD2011801535  
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## **Exhibit A**

**Statement of Issues No. 2012-336**



1 KAMALA D. HARRIS  
Attorney General of California  
2 LINDA K. SCHNEIDER  
Supervising Deputy Attorney General  
3 State Bar No. 101336  
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7 Facsimile: (619) 645-2061  
*Attorneys for Complainant*

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12 Against:

Case No.

2012-336

13 **NEAL STEPHEN CHITTENDEN**  
14 **1137 Stillwater Road**  
**Corona, CA 92882**

**STATEMENT OF ISSUES**

15 Respondent.

16  
17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Statement of Issues solely in  
20 her official capacity as the Executive Officer of the Board of Registered Nursing, Department of  
21 Consumer Affairs.

22 2. On or about March 1, 2011, the Board of Registered Nursing, Department of  
23 Consumer Affairs received an application for a Registered Nurse License from Neal Stephen  
24 Chittenden (Respondent). On or about February 10, 2011, Neal Stephen Chittenden certified  
25 under penalty of perjury to the truthfulness of all statements, answers, and representations in the  
26 application. The Board denied the application on September 22, 2011.

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## JURISDICTION

3. This Statement of Issues is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2736 of the Code provides, in pertinent part, that the Board may deny a license when it finds that the applicant has committed any acts constituting grounds for denial of licensure under section 480 of that Code.

## STATUTORY PROVISIONS

5. Section 475 of the Code states:

(a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

(1) Knowingly making a false statement of material fact, or knowingly omitting to state a material fact, in an application for a license.

(2) Conviction of a crime.

(3) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another.

(4) Commission of any act which, if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(b) Notwithstanding any other provisions of this code, the provisions of this division shall govern the suspension and revocation of licenses on grounds specified in paragraphs (1) and (2) of subdivision (a).

(c) A license shall not be denied, suspended, or revoked on the grounds of a lack of good moral character or any similar ground relating to an applicant's character, reputation, personality, or habits.

6. Section 480 of the Code states:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.

1 (3) (A) Done any act that if done by a licentiate of the business or profession  
2 in question, would be grounds for suspension or revocation of license.

3 (B) The board may deny a license pursuant to this subdivision only if the  
4 crime or act is substantially related to the qualifications, functions, or duties of the  
5 business or profession for which application is made.

6 . . . .

7 7. Section 482 of the Code states:

8 Each board under the provisions of this code shall develop criteria to evaluate  
9 the rehabilitation of a person when:

10 (a) Considering the denial of a license by the board under Section 480; or

11 (b) Considering suspension or revocation of a license under Section 490.

12 Each board shall take into account all competent evidence of rehabilitation  
13 furnished by the applicant or licensee.

14 8. Section 2761 of the Code states:

15 The board may take disciplinary action against a certified or licensed nurse or  
16 deny an application for a certificate or license for any of the following:

17 (a) Unprofessional conduct, which includes, but is not limited to, the  
18 following:

19 . . . .

20 (f) Conviction of a felony or of any offense substantially related to the  
21 qualifications, functions, and duties of a registered nurse, in which event the record of  
22 the conviction shall be conclusive evidence thereof.

23 . . . .

24 9. Section 2762 of the Code states:

25 In addition to other acts constituting unprofessional conduct within the meaning  
26 of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person  
27 licensed under this chapter to do any of the following:

28 . . . .

(b) Use any controlled substance as defined in Division 10 (commencing with  
Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous  
device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner  
dangerous or injurious to himself or herself, any other person, or the public or to the  
extent that such use impairs his or her ability to conduct with safety to the public the  
practice authorized by his or her license.

///

1 (c) Be convicted of a criminal offense involving the prescription, consumption,  
2 or self-administration of any of the substances described in subdivisions (a) and (b) of  
3 this section, or the possession of, or falsification of a record pertaining to, the  
substances described in subdivision (a) of this section, in which event the record of  
the conviction is conclusive evidence thereof.

4 . . . .

5 10. Section 2765 of the Code states:

6 A plea or verdict of guilty or a conviction following a plea of nolo contendere  
7 made to a charge substantially related to the qualifications, functions and duties of a  
8 registered nurse is deemed to be a conviction within the meaning of this article. The  
9 board may order the license or certificate suspended or revoked, or may decline to  
10 issue a license or certificate, when the time for appeal has elapsed, or the judgment of  
conviction has been affirmed on appeal or when an order granting probation is made  
11 suspending the imposition of sentence, irrespective of a subsequent order under the  
provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his  
or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of  
guilty, or dismissing the accusation, information or indictment.

## 12 REGULATORY PROVISIONS

13 11. California Code of Regulations, title 16, section 1444 states:

14 A conviction or act shall be considered to be substantially related to the  
15 qualifications, functions or duties of a registered nurse if to a substantial degree it  
16 evidences the present or potential unfitness of a registered nurse to practice in a  
manner consistent with the public health, safety, or welfare. Such convictions or acts  
shall include but not be limited to the following:

17 (a) Assaultive or abusive conduct including, but not limited to, those violations  
18 listed in subdivision (d) of Penal Code Section 11160.

19 (b) Failure to comply with any mandatory reporting requirements.

20 (c) Theft, dishonesty, fraud, or deceit.

21 (d) Any conviction or act subject to an order of registration pursuant to Section  
290 of the Penal Code.

22 12. California Code of Regulations, title 16, section 1445 states:

23 (a) When considering the denial of a license under Section 480 of the code,  
24 the board, in evaluating the rehabilitation of the applicant and his/her present  
eligibility for a license will consider the following criteria:

25 (1) The nature and severity of the act(s) or crime(s) under consideration as  
26 grounds for denial.

27 (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s)  
28 under consideration as grounds for denial which also could be considered as grounds  
for denial under Section 480 of the code.

1 (3) The time that has elapsed since commission of the act(s) or crime(s)  
2 referred to in subdivision (1) or (2).

3 (4) The extent to which the applicant has complied with any terms of parole,  
4 probation, restitution, or any other sanctions lawfully imposed against the applicant.

5 (5) Evidence, if any, of rehabilitation submitted by the applicant. . . .

6 **FIRST CAUSE FOR DENIAL OF APPLICATION**

7 **(March 16, 2010 Criminal Conviction for DUI on October 19, 2009)**

8 13. Respondent's application is subject to denial under sections 480, subdivision (a)(1)  
9 of the Code in that he was convicted of a crime. The circumstances are as follows:

10 a. On or about March 16, 2010, in a criminal proceeding entitled *People of*  
11 *the State of California v. Neal Stephen Chittenden*, Riverside County Superior Court, case  
12 number RIM542471, Respondent was convicted on his plea of guilty to violating Vehicle Code  
13 section 23152, subdivision (a), driving under the influence of alcohol, and Vehicle Code section  
14 23152, subdivision (b), driving with a blood alcohol concentration (BAC) of .08 percent or more,  
15 misdemeanors.

16 b. As a result of the conviction, on or about March 16, 2010, Respondent was  
17 granted summary probation for 36 months, and ordered to serve 10 days in the custody of the  
18 Riverside County Sheriff's Labor Program, with credit for one day. Respondent was further  
19 ordered to attend and complete a four-month First Offender DUI Program, pay fees, fines and  
20 restitution in the amount of \$2,261.43, and comply with the terms of DUI probation.

21 c. The facts that led to the conviction are that shortly after midnight, on or  
22 about October 19, 2009, a patrol officer with the California Highway Patrol (CHP) observed  
23 Respondent driving in an unsafe manner in the city of Corona. The CHP officer conducted a  
24 traffic stop. Upon contact with Respondent the officer noticed the odor of an alcoholic beverage  
25 emitting from the interior of the vehicle. Respondent exited his vehicle and he was very unsteady  
26 on his feet. During the pre-field sobriety test questions, the officer noticed the odor of an  
27 alcoholic beverage, and Respondent's eyes were red and watery. Respondent could not  
28 satisfactorily perform the field sobriety tests as explained and demonstrated by the officer.  
Respondent provided two breath samples for a preliminary alcohol screening test which were

1 analyzed with a BAC of .163 and .152 percent. Based on Respondent's objective symptoms of  
2 intoxication, he was arrested for driving under the influence of alcohol.

3 **SECOND CAUSE FOR DENIAL OF APPLICATION**

4 **(Unprofessional Conduct – Conviction of a Substantially-Related Crime)**

5 14. Respondent's application is subject to denial under section 480, subdivision (a)(3)(A)  
6 of the Code in that on or about March 16, 2010, Respondent was convicted of a crime that is  
7 substantially related to the qualifications, duties, and functions of a registered nurse, as detailed in  
8 paragraph 13, above, which would be a ground for discipline under section 2761, subdivision (f)  
9 of the Code for a licensed registered nurse.

10 **THIRD CAUSE FOR DENIAL OF APPLICATION**

11 **(Unprofessional Conduct - Dangerous Use of Alcohol)**

12 15. Respondent's application is subject to denial under section 480, subdivision (a)(3)(A)  
13 of the Code in that on or about October 19, 2009, Respondent used alcoholic beverages to an  
14 extent or in a manner that was dangerous and potentially injurious to himself and the public when  
15 he operated a motor vehicle while under the influence of alcohol, as detailed in paragraph 13,  
16 above, which would be a ground for discipline under section 2762, subdivision (b) of the Code  
17 for a licensed registered nurse.

18 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

19 **(Unprofessional Conduct - Conviction of an Alcohol-Related Offense)**

20 16. Respondent's application is subject to denial under section 480, subdivision (a)(3)(A)  
21 of the Code in that on or about March 16, 2010, Respondent was convicted of a criminal offense  
22 involving the consumption of alcohol, as detailed in paragraph 13, above, which would be a  
23 ground for discipline under section 2762, subdivision (c) of the Code for a licensed registered  
24 nurse.

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1 **PRAYER**

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
3 and that following the hearing, the Board of Registered Nursing issue a decision:

- 4 1. Denying the application of Neal Stephen Chittenden for a Registered Nurse License;  
5 2. Taking such other and further action as deemed necessary and proper.  
6

7 DATED: December 1, 2011

8 *Louise R. Bailey*  
9 LOUISE R. BAILEY, M.ED., RN  
10 Executive Officer  
11 Board of Registered Nursing  
12 Department of Consumer Affairs  
13 State of California  
14 Complainant  
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